

reasons given by the Director while passing the order dated 17.08.2015 are not tenable.

31. The learned Single Judge has also agreed with the interpretation of the Government Order in question as was sought to be given by the State Government in the Department of Medical Education. Hence, we do not find ourselves persuaded to be in agreement with the judgment rendered by learned Single Judge which is under appeal before us.

32. The Special Appeal is thus **allowed.**

33. The order dated 17.02.2022 passed by learned Single Judge in Writ-A No. 2001877 of 2015 is hereby set aside. The order dated 17.08.2015 passed by the Director, RML Institute and the Government Order dated 29.08.2014 issued by the Stated Government in the Department of Medical Education are also hereby quashed.

34. We further direct that the appellant-petitioner shall be entitled to the benefits of the Old Pension Scheme while serving the RML Institute as well.

35. There will be no order as to costs.

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**(2023) 5 ILRA 1570**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 04.04.2023**

**BEFORE**

**THE HON'BLE VIVEK CHAUDHARY, J.**

Writ-A No. 5635 of 2023

**Jaidev Singh**

**Versus**

**State of U.P. & Ors.**

**...Petitioner**

**...Respondents**

**Counsel for the Petitioner:**

Sri Gyan Prakash Ojha, Sri Santosh Yadav

**Counsel for the Respondents:**

C.S.C., Sri Shyam Mani Shukla

**Civil Law - Civil Services Regulation, Article 368 - U.P. Palika (Centralized) Services Retirement Benefit Rules, 1981 - Rule 2(10) - Uttar Pradesh Qualifying Services for Pension and Validation Act, 2021. Post-Retiral Benefits - Petitioner was appointed as a daily wager on a class III post as Clerk on 25.09.1990 in Nagar Nigam. He was regularized on 03.01.2006 and retired on 30.06.2022. Petitioner prayed for the grant of all retiral benefits, including gratuity and regular pension, by counting his past services rendered before his regularization. Matter squarely covered by the law settled in case of Prem Singh and Dr. Shyam Kumar. Court directed the Mukhya Nagar Adhikari, Nagar Nigam, to ensure regular payment of pensionary and other retiral benefits to the petitioner under the Rules of 1981, counting his entire service, including the duty performed as a daily wager employee of the Nagar Nigam, within a period of three months. (Para 9)**

**Allowed.** (E-5)

**List of Cases cited:**

1. St. of U.P. & ors. Vs Bhanu Pratap Sharma, Special Appeal No. 97 of 2021
2. Dr. Shyam Kumar Vs St. of U.P., Writ-A No. 8968 of 2022
3. Prem Singh Vs St. of U.P. & ors., (2019) 10 SCC 516
4. The Nagar Ayukt Nagar Nigam Vs Devdatt and 2 Others, Special Appeal Defective No. 482 of 2022
5. Shree Chamundi Mopeds Ltd. Vs Church of South India Trust Association CSI Cinod Secretariat, Madras, 1992 (3) SCC 1

(Delivered by Hon'ble Vivek Chaudhary, J.)

1. Petitioner has approached this Court praying for writ of Mandamus commanding the respondents to give all the retiral benefits including gratuity and regular pension under U.P. Palika (Centralized) Services Retirement Benefit Rules, 1981 (herein after referred to as Rules of 1981) by counting his past services rendered before his regularization. Petitioner was appointed as a daily wager on class III post as Clerk on 25.09.1990. He got regularized on 03.01.2006 and retired on 30.06.2022.

2. Learned counsel for the petitioner submits that the petitioner is entitled for post retiral benefits as per Rule 2(10) of the Rules of 1981 which provides retiral benefits as per Article 368 of Civil Services Regulation. Rule 2(10) of Rules of 1981 reads as:

*"(10) "Qualifying service" means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Service Regulations, as amended from time to time, excepting the following-*

*(i) periods of temporary or officiating service in a non-pensionable establishment under any Municipal Corporation or Municipal Council;*

*(ii) periods of service in work-charted establishment; and*

*(iii) periods of service in a post paid from contingencies:*

*Provided that period of continued temporary or officiating service under any Municipal corporation or Municipal*

*Council shall count as qualifying service if it is followed by confirmation of the same post or any other post without any interruption of service.*

*Note-If service rendered in a non-pensionable establishment, work-charged establishment or in a post paid from contingencies falls between two period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service."*

3. Learned counsel for the petitioner places reliance upon the judgment of Division Bench of this Court in ***Special Appeal No.97 of 2021 (State of U.P. and Others Vs. Bhanu Pratap Sharma)***, judgment of a Single Judge bench in the case of ***Writ-A No.8968 of 2022 (Dr. Shyam Kumar Vs. State Of U.P.)*** and a judgment of three Judges Bench of Supreme Court in case of ***Prem Singh vs. State of U.P. and others, (2019) 10 SCC 516*** which considered entitlement for pension and read down provisions of Uttar Pradesh Retirement Benefits Rules, 1961 and the Civil Services Regulation. The relevant paragraphs of the judgment in case of ***Prem Singh (Supra)*** reads:

*"8. We first consider the provisions contained in the Uttar Pradesh Retirement Benefits Rules, 1961 (for short the 1961 Rules). Rule 3(8) of the 1961 Rules which contains the provisions in respect of qualifying service is extracted hereunder:*

*"3. In these rules, unless is anything repugnant in the subject or context:*

*(1)-(7) \* \* \**

*(8) "Qualifying service" means service which qualifies for pension in*

*accordance with the provisions of Article 368 of the Civil Services Regulations:*

*Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except:*

*(i) periods of temporary or officiating service in a non-pensionable establishment;*

*(ii) periods of service in a work-charged establishment; and*

*(iii) periods of service in a post paid from contingencies shall also count as qualifying service.*

*Note. If service rendered in a non-pensionable establishment work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service.*

*9. Regulations 361, 368 and 370 of the Uttar Pradesh Civil Services Regulations are also relevant. They are extracted hereunder:*

*"361. The service of an officer does not qualify for pension unless it conforms to the following three conditions:*

*First : The service must be under Government.*

*Second : The employment must be substantive and permanent."*

*These three conditions are fully explained in the following Regulations.*

*"368. Service does not qualify unless the officer holds a substantive office on a permanent establishment.*

*370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify, except:*

*(i) periods of temporary or officiating service in non-pensionable establishment;*

*(ii) periods of service in work-charged establishment; and*

*(iii) periods of service in a post paid from contingencies."*

*10. The qualifying service is the one which is in accordance with the provisions of Regulation 368 i.e. holding a substantive post on a permanent establishment. The proviso to Rule 3(8) clarify that continuous, temporary or officiating service followed without interruption by confirmation in the same or any other post is also included in the qualifying service except in the case of periods of temporary and officiating service in a non-pensionable establishment. The service in work-charged establishment and period of service in a post paid from contingencies shall also not count as qualifying service.*

*11. The Note appended to Rule 3(8) contains a provision that if the service is rendered in a non-pensionable establishment, work-charged establishment or in a post paid from contingencies, falls*

*between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service. Thus, the Note contains a clear provision to count the qualifying service rendered in work-charged, contingency paid and non-pensionable establishment to be counted towards pensionable service, in the exigencies provided therein.*

12. *The provisions contained in Regulation 370 of the Civil Services Regulations excludes service in a non-pensionable establishment, work-charged establishment and in a post paid from contingencies from the purview of qualifying service. Under Regulation 361 of the Civil Services Regulations, the services must be under the Government and the employment must be substantive and permanent basis.*

.....

30. *We are not impressed by the aforesaid submissions. The appointment of the work-charged employee in question had been made on monthly salary and they were required to cross the efficiency bar also. How their services are qualitatively different from regular employees. No material indicating qualitative difference has been pointed out except making bald statement. The appointment was not made for a particular project which is the basic concept of the work-charged employees. Rather, the very concept of work-charged employment has been misused by offering the employment on exploitative terms for the work which is regular and perennial in nature. The work-charged employees had been subjected to transfer from one place to*

*another like regular employees as apparent from documents placed on record. In Narain Dutt Sharma v. State of U.P. [CA No. \_\_\_\_\_2019 arising out of SLP (C) No. 5775 of 2018] the appellants were allowed to cross efficiency bar, after "8" years of continuous service, even during the period of work-charged services. Narain Dutt Sharma, the appellant, was appointed as a work-charged employee as Gej Mapak with effect from 15-9-1978. Payment used to be made monthly but the appointment was made in the pay scale of Rs 200-320. Initially, he was appointed in the year 1978 on a fixed monthly salary of Rs 205 per month. They were allowed to cross efficiency bar also as the benefit of pay scale was granted to them during the period they served as work-charged employees they served for three to four decades and later on services have been regularised time to time by different orders. However, the services of some of the appellants in few petitions/appeals have not been regularised even though they had served for several decades and ultimately reached the age of superannuation.*

31. *In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularized. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been deprived*

*of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.*

32. *In view of the Note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work-charged, contingencies or non-pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.*

33. *The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In*

*our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.*

34. *As it would be unjust, illegal and impermissible to make aforesaid classification to make Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.*

35. *In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.*

36. *There are some of the employees who have not been regularised*

*in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.*

*37. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months.*

*Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."*

4. He further submits that since similar rules for pensionary benefits exist in the respondent authority, therefore, the matter is squarely covered by the said judgment and petitioner herein should also be extended the benefit of the law settled in the case of Prem Singh (Supra).

5. Shri Shyam Mani Shukla, learned counsel for respondent Nigam opposes the submissions made by counsel for petitioner. He submits that the pensionary benefits are now regulated as per the Uttar Pradesh Qualifying Services for Pension and Validation Ordinance, 2020 (later replaced by Uttar Pradesh Qualifying Services for Pension and Validation Act, 2021), which excludes services rendered before regularization from the definition of 'Qualifying Services' for pension. He has placed reliance on interim order dated 21.12.2022 of this Court in **Special Appeal Defective No.482 of 2022 (The Nagar Ayukt Nagar Nigam Vs. Devdatt and 2 others)** arising out of judgment and order dated 20.04.2022 passed in Writ A No.5082 of 2022. The relevant portion of the aforesaid judgment reads as:

*"In Re:- Appeal*

*The contention of the learned counsel for the appellant is that the learned Single Judge by the impugned judgment and order dated 20.04.2022 has directed consideration of the claim of the petitioner-respondent in light of the decisions of the Apex Court in Prem Singh's case and Division Bench decision in the case of Chetram. It has been submitted that there are several subsequent developments which*

*could non suit the claim of the petitioner-respondent and even the matter is engaging attention of the Apex Court in Special Leave to Appeal (C) No.5859 of 2022, arising out of judgment of this Court dated 24.08.2021 in Writ-A No.4224 of 2021, wherein an interim order has been passed thereby staying the contempt proceedings.*

*The matter requires consideration.*

*Learned counsel for the petitioner-respondent prays for and is allowed three weeks time to file counter affidavit.*

*List this matter on 18th January, 2023.*

*Till the next date of listing, the effect and operation of the impugned judgment and order dated 20.04.2022 in Writ-A No.5082 of 2022, shall remain stayed."*

6. The aforesaid order passed by Division Bench does not in any manner disturbs any settled law or settles a new law. Suffice would be to refer to the judgment of the Supreme Court in case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras 1992 (3) SCC 1** which clarifies that an interim order does not in any manner impact the law settled by a Court.

7. Judgment in the case of **Bhanu Pratap (supra)** relied upon by the counsel for the petitioner does not consider the interpretation of 'qualifying services' for the purpose of pension as per the U.P. Qualifying Services for Pension and

Validation Ordinance, 2020 (now Act of 2021) are not interpreted.

8. In **Writ-A No.8968 of 2022 (Dr. Shyam Kumar Vs. State Of U.P.)** this Court has interpreted the word 'post' used in Section 2 of the Act of 2021, be it temporary or permanent, and read it down as 'services rendered by an employee, be it of temporary or permanent nature'. Relevant paragraph of the aforesaid judgment reads:

*"14. It is settled since long that daily wager employees are entitled to pensionary benefits counting their services from the date of their initial appointment and not from the date of their regularization. Suffice would be to refer to the judgment in cases of Hari Shankar Asopa vs. State of U.P. and another, 1989(1) UPLBEC 501; Yashwant Hari Katakkar vs. Union of India and others, 1996 (7) SCC 113; and Prem Singh (supra). In fact earlier they were covered by Rule 2 of U.P. Retirement Benefit Rules, 1961 and other Civil Services Regulations.*

*15. Now learned Standing Counsel submits that in view of Section 2 of the Act of 2021, since petitioners were not appointed on a temporary or permanent post initially, therefore, benefit of said services cannot be granted to them.*

*16. The said aspect of the matter is already discussed above at length. Section 2 of the Act of 2021 is already read down and it is held that the word 'post' used in Section 2 of the Act of 2021, be it temporary or permanent, has to be read down as 'services rendered by a government employee, be it of temporary or permanent nature'.*

17. *In view thereof, the petitioners are also covered by the aforesaid interpretation of Section 2 of the Act of 2021 as given in the present judgment. Orders impugned in different writ petitions on the grounds stated above are covered by the earlier judgments as well as by findings given above in this judgment and, hence, petitioners are held to be entitled for counting of their services rendered as daily wagers for pensionary benefits. All impugned orders are set aside."*

9. The present Rules of 1981 are parallel to the Rules of State Government which have been read down by the Supreme Court in the case of Prem Singh (supra), being held violative of Article 14 of the Constitution of India, as they create an artificial categorization of similarly situated employees. In the present case also an artificial classification is created as admittedly, as the daily wager employees perform the same duties as the regular employees and are throughout treated as the regular employee. They were also regularized in continuation of their daily wage services. Thus, the matter is squarely covered by the law settled in case of Prem Singh (Supra) and Dr. Shyam Kumar (supra).

10. Hence, the writ petition is *allowed*.

11. Respondent no.2-Mukhya Nagar Adhikari, Nagar Nigam, Bareilly is directed to ensure regular payment of pensionary and other retiral benefits to the petitioner under the Rules of 1981, counting their entire service including the duty performed as daily wager employee of the Nagar Nigam within a period of three months.

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**(2023) 5 ILRA 1577**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 12.04.2023**

**BEFORE**

**THE HON'BLE SUNEET KUMAR, J.**  
**THE HON'BLE RAJENDRA KUMAR-IV, J.**

Special Appeal No. 344 of 2021

**Chairman & Managing Director, Central Bank Of India, Mumbai** ....Appellant  
**Vijay Agarwal** ...Respondent

**Counsel for the Appellant:**  
Sri Vishnu Pratap, Sri Vijay Kumar

**Counsel for the Respondent:**  
Sri Ajay Rajendra

**Civil Law - Service Matter – Back wages - When dismissal order quashed on ground of quantum of punishment and not on merit – In the instant case the employee was out of service pursuant to order of dismissal dated 04.08.2006 until his reinstatement on 24.08.2013. Aggrieved by the dismissal order, the employee filed a writ petition, which came to be allowed only on the quantum of punishment. Writ Court was of the opinion that the punishment imposed was not commensurate with the guilt. Termination of the employee was not held to be wrongful by the writ Court. Rather, the writ Court was of the opinion that a lesser punishment would suffice, having regard to the guilt of the employee. The employee nowhere pleaded that he was not gainfully employed or employed on lower wages during the period of dismissal of service. Held: It cannot be said that the guilt of the employee stood wiped off; rather, reinstatement was directed as a consequence of the imposition of a lesser punishment. The employee would not be entitled to back wages for the period he has not performed**